IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7862 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHREE RAMA NATHU DODIYAR

Versus

POLICE COMMISSIONER

Appearance:

MR RD GAGDEKAR for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 07/09/2000

ORAL JUDGEMENT

The petitioner has, by filing this writ petition filed under Article 226 of the Constitution of India, challenged the legality and validity of order of detention dated 29th January, 2000, passed by respondent no.1.

2. The detaining authority passed an order of detention under Sec.3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short "the Act") duping the detenu as "dangerous person", on the ground that the activities of detenu are prejudicial to the maintenance of public order.

3. From papers of grounds of detention, it is the case of the detaining authority that seven different types of criminal cases have been registered against the detenu in different Districts. As per case of the detaining authority, petitioner detenu is a "dangerous person" within the meaning of Sec.2(C) of the Act, and that the activities of the petitioner detenu are prejudicial to maintenance of public order. The detaining authority for his subjective satisfaction relied on statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act.

4. Looking to the definition of "dangerous persons", as defined under Sec.2(C) of the Act, a person required to be detained should be such person that he should be a member or leader of a gang and habitually commits or attempts to commit offences punishable under Chapter 16 of 17 of I.P.Code. The word "habitually" has been used in sec.2(c) of the Act with some purpose. Here in this case, there is no pre-history of detenu that he was involved in such type of cases previously, in past.

5. During the course of arguments, Shri R.D.Gagdekar made a statement at the Bar that the detenu was served with detention order on 29th January, 2000 itself and at present he is in Jail.

6. Mr.R.D.Gagdekar has submitted that on 29th January, 2000, the detaining authority passed an order of detention which is challenged in this writ petition. He has argued that the detaining authority has placed reliance on statements of two anonymous witnesses. First such statement was recorded on 25/01/2000 and another was recorded on 26/1/2000. Both these statements were verified by the detaining authority on 29/1/2000 and on the very same day i.e. on 29/1/2000, the detaining authority passed an order of detention against the detenu which is challenged in this writ petition.

7. Shri Gagdekar, learned advocate for the petitioner has argued the privilege under Sec.9(2) of the Act claimed by the detaining authority is vitiated

because the detaining authority had no time to verify these two statements and papers relating to seven other cases lodged against the detenu. Looking to the facts and relevant dates of statements and verification thereof and the date of passing the order of detention, it is physically not possible for any person to apply his mind within one day. For this, he has placed reliance on the case of KALIDAS CHANDULAL KAHAR VS. STATE OF GUJARAT AND OTHERS, reported in 1993 (2), 34(2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising privilege under Sec.9(2) of the Act. Looking to the papers which relate to seven I.P.C. cases and statements of two anonymous witnesses are relied on by the detaining authority, it was not possible for him to apply his mind to verify the statements more particularly for scrutiny of the facts stated therein. The detaining authority is expected to verify the statements on the point as to whether that statements are genuine or not and whether persons of whose statements are recorded are fictitious persons or not and whether that statements are bogus or not. For making this type of verification, some time is necessary and for that exercise by the detaining authority, one has to go for perusal of these statements and papers.

8. Here in this case, none of the respondents has filed affidavit-in-reply, meaning thereby, they have not controverted the case of the petitioner. This Court has in Special Civil Application No.6322 of 1999 decided on 11/2/2000 deprecated the practice of not filing affidavit-in-reply in such type of cases. Thus, it appears that the respondents have not controverted the grounds under which the said order of detention has been attacked and challenged. Under the circumstances, the order of detention creates doubt about application of mind on the part of the detaining authority.

9. In view of the above, this writ petition deserves to be allowed and accordingly it is allowed. The order of detention dated 29th January, 2000 passed by respondent No.1 with respect to detenu is quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required for any other criminal case or Proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 07-09-2000 (H.H. Mehta, J.)
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